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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
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BARTUSKA, FRANCIS JOHN

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 02/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application N .

09/818,616

Applicant(s)

AUGUST ET AL.

Examiner

F. J. BARTUSKA

Art Unit

3627

M4

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-108 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-108 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1, 12-35, 40-42, 46-49, 51-54, 57, 61-70, 72-77, 80-84, 91-95, 98, 99-105, 107 and 108 are rejected under 35 U.S.C. 102(b) as being

clearly anticipated by Hall et al. Hall et al discloses as wireless device 105, see col. 5, lines 48-58, that communicates with an order station 150 at a fulfillment station, see col. 5, lines 15-18. Col. 9, lines 16-18 discloses transmission of special offers to the wireless device. Speech recognition is disclosed in col. 5, line 52 and col. 7, line 57. Selection of the nearest available vendor is disclosed in col. 9, lines 19-50.

3. Claims 1, 31, 35-39 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Showghi et al. Showghi et al disclose wireless ordering devices including payment by telephone account or Internet service provider account, see col. 5, lines 35-38. PIN authorization is disclosed at 44 in Fig. 4.

4. Claims 1, 2, 12, 14, 15, 22-32, 37, 40-43, 46-48, 51-54, 57, 58, 60, 61 and 85 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Pentel. Pentel discloses in Figs. 14-16 a cellular phone 250 for wirelessly transmitting orders to an order fulfillment station 140. Col. 8, lines 18-26 discloses a GPS system for displaying the location of the user.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 3, 4, 6-9, 44, 45 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall et al in view of Kurland et al. Hall et al disclose all the features of the applicants' claimed invention except

the display of the order status at the order preparation area. Kurland et al disclose displays 24 and 26 that display the status of the orders in an interactive restaurant communications system, see col. 3, lines 51-63 and col. 4, lines 42-65. It would have been obvious to one of ordinary skill in the art in view of the showing and teaching of Kurland et al to provide the system of Hall et al with a display to show the status of the orders in the order preparation area.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hall et al in view of Coleman. Hall et al disclose all the features of the applicants' claimed invention except the inventory control.

Coleman discloses a restaurant management system with an inventory control at 64 in Fig. 3 and col. 4, lines 10-22. It would have been obvious to one of ordinary skill in the art in view of the showing and teaching of Coleman to provide the system of Hall et al with an inventory control to maintain sufficient supplies.

9. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall et al in view of Mault. Hall et al disclose all the features of the applicants' claimed invention except the particular

wireless transmission protocol. Mault discloses in col. 7, lines 9-18 that Bluetooth and IEEE 802.11 are well known wireless transmission protocols. It would have been obvious to one of ordinary skill in the art in view of the showing and teaching of Mault to use either Bluetooth or IEEE 802.11 as the wireless transmission protocol since they are both well known and either would work equally well in the device of Hall et al.

10. Claims 49 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall et al in view of Treyz et al. Hall et al disclose all the features of the applicants' claimed invention except the customer loyalty database. Treyz et al disclose in col. 57, line 59 to col. 58, line 12 a customer loyalty card and associated account number to identify a customer for special discounts. It would have been obvious to one of ordinary skill in the art in view of the showing and teaching of Treyz et al to provide the system of Hall et al with a loyalty card system to give discounts to special customers.

11. Claims 55, 56, 71, 78, 79, 96, 97 and 106 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall et al in view of Treyz et

al. Hall et al disclose all the features of the applicants' claimed invention except transmitting directions to the restaurant. Treyz et al disclose in col. 32, lines 12-16 providing directions to the restaurant to the customer. It would have been obvious to one of ordinary skill in the art in view of the showing and teaching of Treyz et al to provide the system of Hall et al with a means to provide directions to the restaurant to the customers.

12. Claims 86 and 87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pentel in view of Kurland et al. Pentel discloses all the features of the applicants' claimed invention except the display of the order status at the order preparation area. Kurland et al disclose displays 24 and 26 that display the status of the orders in an interactive restaurant communications system, see col. 3, lines 51-63 and col. 4, lines 42-65. It would have been obvious to one of ordinary skill in the art in view of the showing and teaching of Kurland et al to provide the system of Pentel with a display to show the status of the orders in the order preparation area.



13. Claims 88 and 90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pentel in view of Kurland et al as applied to claim 86 above, and further in view of Hall et al. Pentel, as modified by Kurland et al, discloses all the features of the applicants' claimed invention except processing the orders based upon the distance that the customers are from the restaurant. Hall et al disclose in col. 8, lines 9-11 processing the orders to coincide with the arrival of the customers at the restaurant. It would have been obvious to one of ordinary skill in the art in view of the showing and teaching of Hall et al to process the orders in the system of Pentel based upon the distance the customers are from the restaurant so that the orders are ready when the customers arrive at the restaurant.

14. Claim 89 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pentel in view of Kurland et al as applied to claim 86 above, and further in view of Coleman. Pentel, as modified by Kurland et al, discloses all the features of the applicants' claimed invention except processing the orders based upon the time it takes to fulfill the order. Coleman discloses in col. 5, lines 10-41 processing the orders according

to the cooking time of each item. It would have been obvious to one of ordinary skill in the art in view of the showing and teaching of Coleman to process the orders in the system of Pentel based upon the cooking time so that all the parts of the order are ready at the appropriate time.

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Knockeart et al is cited to show the GPS system for receiving directions to places such as restaurants. Ishikawa et al is cited for the disclosure in col. 3, lines 35-64 of processing orders according to their cooking times. The German publication is cited for the disclosure of the electronic notebook 1 for transmitting restaurant orders. The British publication is cited for the disclosure on page 2, lines 23-62 of plural order transmitting devices and the means to communicate without collisions in the communication channel.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. J. BARTUSKA whose telephone number is 703-308-1111. The examiner can normally be reached on MONDAY-FRIDAY (ALTERNATE FRIDAYS OFF).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT P. OLSZEWSKI can be reached on 703-308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

F. J. BARTUSKA  
PRIMARY EXAMINER